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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 130214139-3542-02]

RIN 0648-XC789

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; inseason General category retention limit adjustment.

SUMMARY: NMFS is adjusting the Atlantic bluefin tuna (BFT) General category daily retention limit from the default limit of one large medium or giant BFT to three large medium or giant BFT for the September, October through November, and December time periods of the 2013 fishing year. This action is based on consideration of the regulatory determination criteria regarding inseason adjustments, and applies to Atlantic tunas General category (commercial) permitted vessels and Highly Migratory Species (HMS) Charter/Headboat category permitted vessels when fishing commercially for BFT.

DATES: Effective September 1, 2013, through December 31, 2013.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin or Brad McHale, 978-281-9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 et seq.) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 et seq.)

governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) among the various domestic fishing categories, per the allocations established in the 2006 Consolidated Highly Migratory Species Fishery Management Plan (2006 Consolidated HMS FMP) (71 FR 58058, October 2, 2006) and in accordance with implementing regulations. NMFS is required under ATCA and the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest the ICCAT-recommended quota.

The 2010 ICCAT recommendation regarding western BFT management resulted in baseline U.S. quotas for 2011 and for 2012 of 923.7 mt (not including the 25 mt ICCAT allocated to the United States to account for bycatch of BFT in pelagic longline fisheries in the Northeast Distant Gear Restricted Area). Among other things, the 2011 BFT quota rule (76 FR 39019, July 5, 2011) implemented the base quota of 435.1 mt for the General category fishery (a commercial tunas fishery in which handgear is used). Each of the General category time periods (January, June through August, September, October through November, and December) is allocated a portion of the annual General category quota. As published in the final 2013 BFT quota specifications (78 FR 36685, June 19, 2013), the baseline General category subquotas as codified have not been modified, and include 115.3 mt for September, 56.6 mt for October through November, and 22.6 mt for December.

Unless changed, the General category daily retention limit starting on September 1 would be the default retention limit of one large medium or giant BFT (measuring 73 inches (185 cm) curved fork length (CFL) or greater) per vessel per day/trip (§ 635.23(a)(2)). This default

retention limit would apply to General category permitted vessels and to HMS Charter/Headboat category permitted vessels when fishing commercially for BFT.

For the 2012 fishing year, NMFS adjusted the General category limit from the default level of one large medium or giant BFT as follows: two large medium or giant BFT for January (76 FR 76900, December 9, 2011), three large medium or giant BFT for June through August (77 FR 28496, May 15, 2012), and three large medium or giant BFT for September through December (77 FR 53150, August 31, 2012). In December 2012, NMFS transferred 40 mt of BFT quota from the Reserve category to the General category for the remainder of 2012 and adjusted the daily retention limit for the 2013 January subquota period from the default level of one large medium or giant BFT to two large medium or giant BFT (77 FR 74612, December 17, 2012). That retention limit was effective from January 1, 2013, until February 15, 2013, when NMFS closed the fishery because the January subquota had been met (78 FR 11788, February 20, 2013). For the June through August 2013 period, NMFS adjusted the limit to three large medium or giant BFT (78 FR 26709, May 8, 2013).

Adjustment of General Category Daily Retention Limit

Under § 635.23(a)(4), NMFS may increase or decrease the daily retention limit of large medium and giant BFT over a range of zero to a maximum of five per vessel based on consideration of the relevant criteria provided under § 635.27(a)(8), which include: the usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock; effects of the adjustment on BFT rebuilding and overfishing; effects of the adjustment on accomplishing the objectives of the fishery management plan; variations in seasonal BFT distribution, abundance, or migration patterns; effects of catch rates in one area precluding vessels in another area from having a reasonable

opportunity to harvest a portion of the category's quota; and review of dealer reports, daily landing trends, and the availability of BFT on the fishing grounds.

NMFS has considered these criteria and their applicability to the General category BFT retention limit for the September through December 2013 General category fishery. These considerations include, but are not limited to, the following:

Biological samples collected from BFT landed by General category fishermen and provided by BFT dealers continue to provide NMFS with valuable data for ongoing scientific studies of BFT age and growth, migration, and reproductive status. This action would be taken consistent with the quotas previously implemented and analyzed in the 2011 BFT quota final rule (76 FR 39019, July 5, 2011), consistent with the objectives of the 2006 Consolidated HMS FMP. This action will not have impacts beyond those already analyzed and thus is not expected to negatively impact the stock. A principal consideration is the objective of providing opportunities to harvest the full General category quota without exceeding it based upon the 2006 Consolidated HMS FMP goal: "Consistent with other objectives of this FMP, to manage Atlantic HMS fisheries for continuing optimum yield so as to provide the greatest overall benefit to the Nation, particularly with respect to food production, providing recreational opportunities, preserving traditional fisheries, and taking into account the protection of marine ecosystems." Commercial-sized BFT migrated to the fishing grounds off New England by early June and are actively being landed. Lastly, despite the current three-fish daily retention limit, 2013 General category landings remain low.

As of August 9, 2013, 110.4 mt of the 2013 General category quota of 435.1 mt have been landed, and landings rates remain at approximately 1 mt per day. Given the rollover of unused quota from the one time period to the next, current catch rates, and the fact that the daily

retention limit will automatically revert to one large medium or giant BFT per vessel per day on September 1, 2013, absent agency action, NMFS anticipates the full 2013 General category quota may not be harvested. However, based on the pattern exhibited over the last few years, NMFS anticipates an increase in both landings of BFT (in number) and average fish weight for the remainder of the year, relative to the same period of 2012, such that a continued three-fish limit may result in higher landings than in previous years.

A lower limit could result in unused quota being added to the later portion of the General category season (i.e., rolling forward to the subsequent subquota time period). Increasing the daily retention limit from the default may mitigate rolling an excessive amount of unused quota from one time-period subquota to the next. Increasing the daily limit from three to four or five fish may risk exceeding the available General category quota. As referred to above, by late November 2012, NMFS determined that the General category had reached 98 percent of its 2012 quota of 435.1 mt under the three-fish limit that was in effect. In order to extend fishing opportunities and allow continued collection of biological samples from General category landings throughout the remainder of 2012, NMFS transferred 40 mt of available quota from the Reserve to the General category (77 FR 74612, December 17, 2012). The Reserve quota available for transfers in 2013 will be under 23 mt, substantially less than in recent years, and will depend on reported 2013 research landings to date.

Based on these considerations, NMFS has determined that a three-fish General category retention limit is warranted at this time. That retention limit should provide a reasonable opportunity to harvest the U.S. BFT quota, without exceeding it, while maintaining an equitable distribution of fishing opportunities; help achieve optimum yield in the General category BFT fishery; allow the collection of a broad range of data for stock monitoring purposes; and be

consistent with the objectives of the 2006 Consolidated HMS FMP. Therefore, NMFS increases the General category retention limit from the default limit (one) to three large medium or giant BFT per vessel per day/trip, effective September 1, 2013, through December 31, 2013.

Regardless of the duration of a fishing trip, the daily retention limit applies upon landing. For example, whether a vessel fishing under the General category limit takes a two-day trip or makes two trips in one day, the daily limit of three fish may not be exceeded upon landing. This General category retention limit is effective in all areas, except for the Gulf of Mexico, and applies to those vessels permitted in the General category, as well as to those HMS Charter/Headboat permitted vessels fishing commercially for BFT.

Monitoring and Reporting

NMFS will continue to monitor the BFT fishery closely through the mandatory dealer landing reports, which NMFS requires to be submitted within 24 hours of a dealer receiving BFT. Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional retention limit adjustment or closure is necessary to ensure available quota is not exceeded or to enhance scientific data collection from, and fishing opportunities in, all geographic areas.

Closures or subsequent adjustments to the daily retention limits, if any, will be published in the Federal Register. In addition, fishermen may call the Atlantic Tunas Information Line at (888) 872-8862 or (978) 281-9260, or access hmspermits.noaa.gov, for updates on quota monitoring and retention limit adjustments.

Classification

The Assistant Administrator for NMFS (AA) finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons:

The regulations implementing the 2006 Consolidated HMS FMP provide for inseason retention limit adjustments to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of the species, and the regional variations in the BFT fishery. Affording prior notice and opportunity for public comment to implement these retention limits is impracticable as NMFS needs to wait until it has necessary data and information about the fishery before it can select the appropriate retention limit for a time period prescribed by regulation. By the time NMFS has the necessary data, implementing the retention limit following a public comment period would preclude fishermen from harvesting BFT that are legally available consistent with all of the regulatory criteria. Analysis of available data shows that the General category BFT retention limits may be increased with minimal risks of exceeding the ICCAT-allocated quota.

Delays in increasing these retention limits would adversely affect those General and Charter/Headboat category vessels that would otherwise have an opportunity to harvest more than the default retention limit of one BFT per day/trip and may exacerbate the problem of low catch rates and quota rollovers. Limited opportunities to harvest the respective quotas may have negative social and economic impacts for U.S. fishermen that depend upon catching the available quota within the time periods designated in the 2006 Consolidated HMS FMP. Adjustment of the retention limit needs to be effective September 1, 2013, or as soon as possible thereafter, to minimize any unnecessary disruption in fishing patterns, to allow the impacted sectors to benefit from the adjustment, and to not preclude fishing opportunities for fishermen in geographic areas

with access to the fishery only during this time period. Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For these reasons, there is good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

This action is being taken under § 635.23(a)(4) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 971 et seq. and 1801 et seq.

Dated: August 14, 2013.

James P. Burgess,
Acting Deputy Director,
Office of Sustainable Fisheries,
National Marine Fisheries Service.

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